

## **Part 4**

### **Enforcement**

#### **61-2f-401 Grounds for disciplinary action.**

The following acts are unlawful for a person licensed or required to be licensed under this chapter:

- (1)
  - (a) making a substantial misrepresentation, including in a licensure statement;
  - (b) making an intentional misrepresentation;
  - (c) pursuing a continued and flagrant course of misrepresentation;
  - (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
  - (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed consent of the parties;
- (3)
  - (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
  - (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
  - (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
- (4)
  - (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
  - (b) commingling money described in Subsection (4)(a) with the person's own money; or
  - (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
- (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:
  - (a) with a principal broker of another jurisdiction; or
  - (b) as provided under:
    - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
    - (ii) Title 16, Chapter 11, Professional Corporation Act; or
    - (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
- (6) for a principal broker, paying or offering to pay a sales agent or associate broker who is not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation;
- (7) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;
- (8) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;
- (9) failing to keep and make available for inspection by the division a record of each transaction, including:
  - (a) the names of buyers and sellers or lessees and lessors;
  - (b) the identification of real estate;
  - (c) the sale or rental price;

- (d) money received in trust;
- (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;
- (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;
- (11) being convicted, within five years of the most recent application for licensure, of a criminal offense involving moral turpitude regardless of whether:
  - (a) the criminal offense is related to real estate; or
  - (b) the conviction is based upon a plea of nolo contendere;
- (12) having, within five years of the most recent application for a license under this chapter, entered any of the following related to a criminal offense involving moral turpitude:
  - (a) a plea in abeyance agreement;
  - (b) a diversion agreement;
  - (c) a withheld judgment; or
  - (d) an agreement in which a charge was held in suspense during a period of time when the licensee was on probation or was obligated to comply with conditions outlined by a court;
- (13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
- (14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;
- (15) violating or disregarding:
  - (a) this chapter;
  - (b) an order of the commission; or
  - (c) the rules adopted by the commission and the division;
- (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (17) any other conduct which constitutes dishonest dealing;
- (18) unprofessional conduct as defined by statute or rule;
- (19) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
  - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
  - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
- (20) failing to respond to a request by the division in an investigation authorized under this chapter, including:
  - (a) failing to respond to a subpoena;
  - (b) withholding evidence; or
  - (c) failing to produce documents or records;
- (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
  - (a) providing a title insurance product or service without the approval required by Section 31A-2-405; or
  - (b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);
- (22) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;
- (23)

- (a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;
- (b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;
- (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:
  - (i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
  - (ii) falsely representing or advertising that the licensee is acting on behalf of:
    - (A) a government agency;
    - (B) the person's lender or loan servicer; or
    - (C) a nonprofit or charitable institution; or
- (d) recommending or participating in a foreclosure rescue that requires a person to:
  - (i) transfer title to real estate to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
  - (ii) make a mortgage payment to a person other than the person's loan servicer; or
  - (iii) refrain from contacting the person's:
    - (A) lender;
    - (B) loan servicer;
    - (C) attorney;
    - (D) credit counselor; or
    - (E) housing counselor;
- (24) as a principal broker, placing a lien on real property, unless authorized by law; or
- (25) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services.

Amended by Chapter 384, 2016 General Session

#### **61-2f-402 Investigations.**

- (1) The division may make an investigation within or outside of this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter.
- (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to the facts and circumstances concerning the matter to be investigated.
- (3) For the purpose of the investigation described in Subsection (1), the division or an employee designated by the division may:
  - (a) administer an oath or affirmation;
  - (b) issue a subpoena that requires:
    - (i) the attendance and testimony of a witness; or
    - (ii) the production of evidence;
  - (c) take evidence;
  - (d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and
  - (e) serve a subpoena by certified mail.
- (4)

- (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
  - (b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.
- (5)
- (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.
  - (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the person's license, certification, or registration is automatically suspended:
    - (i) beginning the day on which the payment of costs is due; and
    - (ii) ending the day on which the costs are paid.
- (6)
- (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:
    - (i) four years after the day on which the violation is reported to the division; or
    - (ii) 10 years after the day on which the violation occurred.
  - (b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:
    - (i)
      - (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and
      - (B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
    - (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Amended by Chapter 384, 2016 General Session

**61-2f-403 Mishandling of trust money.**

- (1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust money under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of money, the division, with the concurrence of the commission, may order a complete audit of the account by a certified public accountant at the licensee's expense, or take other action in accordance with Section 61-2f-404.
  - (2) The licensee may obtain agency review by the executive director or judicial review of any division order.
- (3)
- (a) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust money, the division, with or without prior administrative proceedings, may bring an action:
    - (i) in the district court of the district where:
      - (A) the person resides;
      - (B) the person maintains a place of business; or
      - (C) the act or practice occurred or is about to occur; and
    - (ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.

- (b) Upon a proper showing, a court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The division is not required to post a bond in any court proceeding.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-404 Disciplinary action -- Judicial review.**

- (1)
  - (a) On the basis of a violation of this chapter, the commission with the concurrence of the director, may issue an order:
    - (i) imposing an educational requirement;
    - (ii) imposing a civil penalty not to exceed the greater of:
      - (A) \$5,000 for each violation; or
      - (B) the amount of any gain or economic benefit derived from each violation;
    - (iii) taking any of the following actions related to a license, registration, or certificate:
      - (A) revoking;
      - (B) suspending;
      - (C) placing on probation;
      - (D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or
      - (E) in the case of denial or revocation of a license, registration, or certificate, setting a waiting period for an applicant to apply for a license, registration, or certificate under this title;
    - (iv) issuing a cease and desist order;
    - (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the commission finds that the person complies with court ordered restitution; or
    - (vi) doing any combination of Subsections (1)(a)(i) through (v).
  - (b)
    - (i) If the commission with the concurrence of the director issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.
    - (ii) If a person fails to comply by the stated deadline:
      - (A) the person's license, registration, or certificate is automatically suspended:
        - (I) beginning the day specified in the order as the deadline for compliance; and
        - (II) ending the day on which the person complies in full with the order; and
      - (B) if the person fails to pay a fine required by an order, the division may begin a collection process:
        - (I) established by the division, with the concurrence of the commission, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
        - (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
  - (c) If a licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.
  - (d) A person previously licensed under this chapter remains responsible for, and is subject to disciplinary action for, an act the person committed while the person was licensed in violation of this chapter or an administrative rule in effect at the time the person committed the act, regardless of whether the person is currently licensed.

(2)

- (a) An applicant, certificate holder, licensee, registrant, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.
- (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
- (c)
  - (i) An order, ruling, or decision of the division shall take effect and become operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.
  - (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.
  - (iii) An appeal is governed by the Utah Rules of Appellate Procedure.
- (3) The commission and the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Amended by Chapter 384, 2016 General Session

**61-2f-405 Criminal penalties for violation of chapter -- Other penalties.**

- (1)
  - (a) An individual required to be licensed under this chapter who violates this chapter, in addition to being subject to a license sanction or a fine ordered by the commission, is, upon conviction of a first violation, guilty of a class A misdemeanor.
  - (b) For a conviction under this Subsection (1), imprisonment shall be for a term not to exceed six months.
- (2)
  - (a) Upon conviction of a second or subsequent violation, an individual is guilty of a third degree felony.
  - (b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not to exceed two years.
- (3) An officer or agent of a corporation, a member or agent of a partnership or association, or an individual in a similar position of another type of entity who personally participates in or is an accessory to any violation of this chapter by the entity is subject to the penalties prescribed for an individual.
- (4) If a person receives money or its equivalent, as commission, compensation, or profit by or in consequence of a violation of this chapter, that person is liable for an additional penalty of not less than the amount of the money received and not more than three times the amount of money received, as may be determined by the court. This penalty may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved for the person's own use and benefit.
- (5) A fine imposed by the commission and the director under this chapter shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and Recovery Fund to be used in a manner consistent with the requirements of Part 5, Real Estate Education, Research, and Recovery Fund Act.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-406 Grounds for revocation of principal broker's license.**

- (1) An unlawful act or violation of this chapter committed by a person listed in Subsection (2) is cause for:
  - (a) the revocation, suspension, or probation of a principal broker's license; or
  - (b) the imposition of a fine against the principal broker in an amount not to exceed \$5,000 per violation.
- (2) Subsection (1) applies to an act or violation by any of the following:
  - (a) a sales agent or associate broker employed by a principal broker;
  - (b) a sales agent or associate broker engaged as an independent contractor by or on behalf of a principal broker; or
  - (c) an employee, officer, or member of a principal broker.

Amended by Chapter 350, 2014 General Session

**61-2f-407 Remedies and action for violations.**

- (1)
  - (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:
    - (i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and
    - (ii) it appears to the director that it would be in the public interest to stop the act.
  - (b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.
  - (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.
  - (d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (2)
  - (a) After a hearing requested under Subsection (1), if the commission and the director agree that an act of the person violates this chapter, the director:
    - (i) shall issue an order making the order issued under Subsection (1) permanent; and
    - (ii) may impose another disciplinary action under Section 61-2f-404.
  - (b) The director shall file suit in the name of the Department of Commerce and the Division of Real Estate, in the district court in the county in which an act described in Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:
    - (i)
      - (A) a hearing is not requested under Subsection (1); and
      - (B) the person fails to cease the act described in Subsection (1); or
    - (ii) after discontinuing the act described in Subsection (1), the person again commences the act.
  - (c) A district court of this state has jurisdiction of an action brought under this section.
  - (d) Upon a proper showing in an action brought under this section or upon a conviction under Section 76-6-1203, the court may:
    - (i) issue a permanent or temporary, prohibitory or mandatory injunction;
    - (ii) issue a restraining order or writ of mandamus;
    - (iii) enter a declaratory judgment;
    - (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
    - (v) order disgorgement;

- (vi) order rescission;
- (vii) impose a civil penalty not to exceed the greater of:
  - (A) \$5,000 for each violation; or
  - (B) the amount of any gain or economic benefit derived from a violation; and
- (viii) enter any other relief the court considers just.
- (e) The court may not require the division to post a bond in an action brought under this Subsection (2).
- (3) A license, certificate, or registration issued by the division to any person convicted of a violation of Section 76-6-1203 is automatically revoked.
- (4) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-408 Court-ordered discipline.**

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-409 Actions for recovery of compensation restricted.**

- (1)
  - (a) A person may not bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation, for any act done or service rendered if the act or service is prohibited under this chapter.
  - (b) Except as provided in Subsection (1)(a), a person may bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation if the person is:
    - (i) a principal broker;
    - (ii) an individual that was licensed as a principal broker at the time the act or service that is the subject of the lawsuit was performed; or
    - (iii) an entity that, under the records of the Division of Real Estate, is affiliated with a principal broker.
- (2)
  - (a) A sales agent or associate broker may not sue in that individual's own name for the recovery of a fee, commission, or compensation for services as a sales agent or associate broker unless the action is against the principal broker with whom the sales agent or associate broker is or was affiliated.
  - (b) An action for the recovery of a fee, commission, or other compensation may only be instituted and brought by the principal broker with whom a sales agent or associate broker is affiliated.

Amended by Chapter 292, 2013 General Session

**61-2f-410 Effect of expiration, revocation, or suspension -- Notice required.**

- (1)
  - (a) The revocation or suspension of a principal broker license automatically inactivates an associate broker license or a sales agent license that was issued based upon the licensee's affiliation with the principal broker whose license is revoked or suspended, pending a change of principal broker affiliation.



- (b) If an individual's associate broker license or sales agent license becomes inactive under Subsection (1)(a), the individual may affiliate with another principal broker licensed under this chapter.
- (2) Before the day on which a suspension or revocation of a principal broker's license is effective, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:
  - (a) that the principal broker's license will be revoked or suspended;
  - (b) of the day on which the revocation or suspension is effective; and
  - (c) that the licensee's license will be inactive beginning on the day on which the principal broker's license is revoked or suspended.
- (3) If a principal broker fails to timely renew the principal broker's license in accordance with this chapter, on the day on which the principal broker's license expires, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:
  - (a) that the principal broker's license is expired;
  - (b) of the day on which the principal broker's license expired; and
  - (c) that the licensee's license is inactive beginning on the day on which the principal broker's license expired.

Enacted by Chapter 350, 2014 General Session